

## MAGAZINES, MINISTERS AND “MONOCULTURE”: THE CANADA-UNITED STATES DISPUTE OVER “SPLIT RUN” MAGAZINES IN THE 1990S

JOHN STEWART\*

In my twenty years of work in the Canada-United States intergovernmental relationship, the most serious dispute I have witnessed, in both length and bitterness, was a prolonged battle over the Canadian market for magazine advertising. A round had been fought decades before I joined the United States Embassy in Ottawa as an economist in 1990, and the phase in which I participated stretched from mid-1993 to mid-1999, consuming an incredible amount of reporters’ ink and diplomatic goodwill—although the commercial stakes were tiny.

That the dispute lasted so long is no surprise since international disputes tend to be persistent. Other questions are more puzzling. Why did it so dominate news and perceptions of the relationship during the late 1990s? Why did intergovernmental relations during its height in 1998-99 become so uncharacteristically strained? Why did the widely perceived war over cultural policy between Canada and the United States melt away once the magazine dispute was over? What lessons can the foreign policy community learn from this episode? This article summarizes the history of the dispute and answers these questions.

Some of my colleagues at United States Embassy Ottawa used the term “non-Americanism” to denote a peculiarly Canadian political-emotional response: not exactly prejudice against Americans (which they have experienced), but more precisely the will to be different from them. English-speaking Canada’s roots among refugees from the American Revolutionary War ingrained views that the new United States of America was violent, disrespectful of authority, and socially flawed. The American Civil War of the 1860s reinforced these views. These circumstances helped drive Canadians to want to build a deliberately non-American culture. Following the Second World War, US influences seemed overwhelming to Canadians, who established a wide range of government measures to roll back US corporate and media hegemony, including many measures in the arts, publishing, film, and broadcasting.

Keith Acheson and Christopher Maule (1999) have described and analyzed the history of Canadian magazine policy and the dispute up to early 1999 (shortly before the dispute was resolved). The fight was over split-run magazine editions that used editorial content developed in the United States, but included ads aimed at readers in Canada. As a result of a Royal Commission on Publications in the early 1960s, Canada implemented measures intended to divert more advertising revenue to Canadian-owned periodicals. While these measures put an end to most split runs by the mid-1960s, the two largest such magazines—*Time* and *Reader’s Digest*—were exempted.

By the 1980s Canada’s so-called cultural industries had accrued a large number of vested interests and supporters in the arts, entertainment, and media fields. The pro-market Progressive Conservative government, led by Prime Minister Brian Mulroney (1984-93), chose to leave existing cultural policies largely intact. The Canada-United States Free Trade

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\* John Stewart is a Canadian who has worked with the Embassy of the United States in Ottawa since 1990. He was Economic Specialist until 2008 and is now Supervisor of the Financial Management Centre. John is also currently Vice President of the Ottawa Community Immigrant Services Organization (OCISO). The views expressed are those of the author and do not necessarily reflect those of the Embassy or the Department of State.

Agreement (FTA) of the late 1980s included an exemption clause allowing Canada to continue measures to protect and subsidize a wide range of activities that were defined as cultural. This exemption was carried over into the North American Free Trade Agreement (NAFTA) in 1993. The United States retained the right to take measures of equivalent commercial effect if its industries were disadvantaged by a Canadian measure that, if not for the cultural exemption, would have been disallowed by the Agreements.<sup>1</sup>

While allowing the cultural exemption was a concession by the United States, it made it politically easier for Canada to join general free trade arrangements that applied to other goods, and thus helped to cement broader, positive economic relationships within North America.

There were three measures that kept split runs (other than those grandfathered) out of Canada from the 1960s until the mid-1990s. First, there was a ban on importing physical printed copies of a split-run magazine into Canada. Second, advertisers benefited from an income tax deduction against the cost of ads they bought in Canadian magazines, but not for ads they bought in non-Canadian magazines. Third, there was a postal subsidy: Canada Post delivered Canadian magazines at cheap rates.

By 1993, a Canadian split run, which was edited in New York, no longer had to be printed in the United States and physically trucked across the border; it could be transmitted digitally to a Canadian printing plant and then printed and distributed within Canada. While this did not change the disadvantages conferred by the postal subsidy or the income tax differential, it did get around the import ban at the border.

Time, the company that owned *Sports Illustrated (SI)*, a US general-interest sports magazine, which did not have an equivalent in the Canadian market, produced six trial issues of an *SI* split run in this way during 1993. This was generally viewed as a test of Canada's magazine policy. Canada responded by creating a task force, which recommended that existing split runs be allowed to publish the same number of issues annually in future years as they had done in 1993. Other new split runs would be kept out of the market by an 80 percent excise tax on the value of ads sold in each issue. This meant that, in effect, *Sports Illustrated Canada* would be limited in future to six issues annually. However, Time had planned a dozen *SI Canada* issues for 1994 and wanted to increase it to a weekly. Canadian magazine publishers, on the other hand, wanted *SI Canada* cut off completely.

After lengthy deliberation in 1994, Canada prepared legislation that gave Canadian magazine publishers what they wanted. *SI Canada* would be shut down, using the excise tax device. The bill continued the grandfathering of the two long-established split runs that had been in existence a week prior to *SI Canada*'s first issue. This bill, C-103, passed the House of Commons in November 1995.

However, Bill C-103 had a problem: Time's publication of those six issues had conformed to Canadian laws and regulations that were in force at the time, as did Time's plans to publish more than six issues per year. Now, in late 1995, Parliament was considering a bill that would step in and change the rules, making that business plan (and any sunk investments that had gone into it) non-viable after the fact. Moreover, the bill targeted a single company—this was clear from the dating in the grandfather clause.

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<sup>1</sup> This right to retaliate has never been tested.

On March 11, 1996, the United States formally complained about Canada's magazine policies to the Dispute Settlement Body of the World Trade Organization (WTO). Canada lost, and on appeal, lost again. The 80 percent excise tax was not consistent with Canada's multilateral trade commitments. Moreover, the border import ban and the postal rate subsidy were also found to be WTO-inconsistent—the first by both panels, the second only on appeal WTO (1997a; 1997b).<sup>2</sup> Canada had until October 1998 to reform its anti-split-run measures. This fifteen-month period was a long wait for those on the US side of the dispute.

Within Canada, international trade lawyers were early and thorough critics of the government's approach, in which they saw a variety of defects. Writing in his column in *The Financial Post* newspaper, Samuel Slutsky (1997) observed that anti-dumping law—which provides for remedies against imports that are being sold below their cost of production, or below the price at which they are sold in the country of production—would have been a better instrument to use. While the concept of dumping really applied to trade in goods, and there were no cases of its being applied to a product with near-zero marginal costs (as in the case of advertising), Slutsky argued that this approach was, nonetheless, a legal option for the Canadian government.

Slutsky and other lawyers noted another flaw of C-103: it violated basic principles of tax law, since taxpayers could not gauge their tax liability in advance. Trade law expert, Dennis Browne, later warned Canada's Senate that the US legal case throughout the dispute was strengthened by the fact that Canada's intention was clearly to exclude US magazines. Canada's approach, he said, was a good example of how not to go about fostering cultural expression (Canada, 1999a). Professor Jamie Cameron of Osgoode Hall Law School told Senators that "C-55's violations of expressive freedom and freedom of the press are neither trivial nor insubstantial" and that they might not withstand Charter of Rights challenges (Canada, 1999b).<sup>3</sup>

My colleagues in the United States Government recognized and accepted that Canada had obtained an exemption for its cultural industries in the FTA and NAFTA. The United States Government took no issue with Canada concerning cultural identity, and its purpose was not to challenge Canada's ability to identify Canada to Canadians. Understandably, there were also broader views on the US side about political freedom. When governments own news organizations, and when government policies attempt systematically to shape media content, it is fair to suggest that risks to democracy are likely to exist. However, just as they accepted the cultural exemption clause in the FTA, my colleagues accepted these features of Canadian society and left them out of the bilateral discussion.

Rather, my American colleagues were focused on trade rules to which both of our countries had signed and were committed. What means could legitimately be followed to get to the "cultural" end? What measures plausibly did something to support culture, and which were simply favouring some commercial enterprises over others? The Canadian government's view was, in effect, that anything that favoured Canadian media and entertainment companies should be encouraged—an extension of Canada's nation-building, institution-creating tradition. However, in the minds of my trade policy colleagues, protectionist impulses of this kind were to be expected and countries signed trade agreements

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<sup>2</sup> See also the WTO (nd). *Secretariat's Summary of the dispute to date*.

<sup>3</sup> C-55 was introduced in 1998 to replace C-103.

precisely in order to restrain them. If Canadians wanted to promote their culture, they should focus on nurturing creative products, rather than companies.<sup>4</sup>

During May 1998, while we waited for Canada to reform its magazine policies in order to bring them into line with the previous year's WTO panel reports, a policy memo titled "Coping with Culture" circulated through our offices.<sup>5</sup> It argued that, while the United States had to continue its efforts to change or mitigate specific Canadian policies, it might also benefit from finding ways to engage the Canadians constructively on cultural policy issues. Suggested steps included developing a public message, talking to broader Canadian audiences, expanding contacts among stakeholders on both sides, and opening up discussions on how to approach new media like the internet.

On June 2, while we were digesting these thoughts, Canadian Heritage Minister Sheila Copps—the mid-to-senior-level cabinet minister responsible for cultural industries—announced that she would host an international meeting on cultural policy at the end of June in Ottawa. Ministers from some twenty like-minded countries were invited, but the United States was not. This was billed as a follow-up to a UNESCO conference in March at which Minister Copps had decried the "Americanization of the world". The US Embassy requested observer status at an advance roundtable discussion on international culture that was to be held in Ottawa on June 12, but we received no timely reply. Ambassador Giffin was, at the last minute, offered the opportunity to attend but without the right to speak, and given those conditions, he declined. Our sense after the meeting was that it did not yield the level of international support for which Canada had hoped. Most participants were willing to agree that cultural products were somewhat different from other traded commodities, but they were not ready to agree that different trade rules should therefore apply. Perhaps, understandably, given its unusually direct exposure to US media, English-speaking Canada seemed to be unique in the strength of its feelings about the cultural influence of the United States.

During July, the Association of Canadian Advertisers (ACA)—which represented a far broader set of industries than magazine publishers—complained both privately to the US Embassy and publicly in a letter to Minister Copps that Canadian Heritage ministry officials "worked uniquely with the Canadian magazine publishing industry in developing policy proposals" (private interview). The ACA's Ron Lund later told the House of Commons Standing Committee on Canadian Heritage that a key magazine industry leader, Telemedia President François de Gaspé Beaubien, had assured the ACA that they would be involved, but that they received information late. When ACA complained about the direction of government policy, they were told by de Gaspé Beaubien that "the train had left the station". Lund said, "on at least three occasions, de Gaspé Beaubien said that he was not allowed by the government to share information with us" (Canada, 1998).<sup>6</sup>

The ACA said Canadian Heritage staffers had admitted that the measures being developed by the government would not increase the amount of Canadian content in magazines.

<sup>4</sup> This leaves aside the argument made by Dennis Browne, the Association of Canadian Advertisers, Time, and others that Canada's magazine protections were not actually effective in promoting the health of Canadian magazines. We return to this point later.

<sup>5</sup> This paper originated in the Economic and Business Bureau (EB) of the State Department in Washington. EB tended to take a more rounded and thoughtful view of international trade policy than the more adversarial positions that were characteristic of the lawyer-dominated Office of the US Trade Representative (USTR).

<sup>6</sup> International trade lawyer, Clifford Sosnow, added, "when we met with department officials and we asked to be a constructive voice in the development of proposals, we were specifically informed that the government had a special relationship with the Canadian magazine industry and therefore there would be certain information that would be provided to the magazine industry and a certain closeness in relationship to the magazine industry that would not be afforded to advertisers in this process."

Protection, the ACA said, had prevented the healthy growth of the magazine industry by blocking a range of innovations, which had occurred in other countries, to the point that the Canadian magazine industry was slowly losing its share of the Canadian media market. Canadian general magazines drew only about four percent of all Canadian advertising spending in 1996, versus about nine percent for US magazines in the United States, and a number of major readerships were simply not being served (the lack of a Canadian equivalent to *Sports Illustrated* being one example).

Around this time, Canadian Heritage commissioned a consultant's report, which I never saw and which was never made public, but which (according to newspaper reports) said that as many as eighty US magazines were "poised to flood the Canadian market," twenty of them within two years and the rest within five years (*The Montreal Gazette*, 1998).<sup>7</sup> The effect of this news was to support the impression in Canada that US media interests were virtually lined up along the border, waiting to invade as soon as Canada's anti-split-run measures were torn down. This was not borne out, not by US firms' commercial interest at the time or by changes in the market later. A Time executive told me: "Nobody is lined up at the border, especially not with the Canadian dollar this low. Canada is the only market I've seen with so many magazines given away free to the consumer. There's no reader commitment. More competition might actually help to grow the pie" (personal conversation).

On July 28, 1998, a senior Canadian trade official briefed the Embassy on the new approach—replacing C-103—that the Government would announce the next day. Canada planned to repeal the 80 percent excise tax on advertising in split runs, remove the prohibition on imports, and equalize the postal rates paid by foreign and domestic publishers (paying a subsidy directly to Canadian firms instead). At the same time, Canada planned to introduce a bill within a few months to prohibit foreign magazine publishers from selling advertising services specifically directed at the Canadian market. In other words, Canada planned to follow the letter of what the WTO had told it to do, but it would introduce new measures that would redefine advertising in magazines as a service, thus hopefully putting it beyond the reach of the WTO. In essence, Canada was trying a jurisdictional dodge.

The next day, July 29, Canadian Heritage Minister Copps and International Trade Minister Sergio Marchi announced the government's plan at a press conference in the Toronto area. Their general theme was that the government was standing up for Canada while also playing by the international rules. The ministers' rhetoric indicated that the dispute would likely run for months to come, and perhaps go through another cycle of WTO dispute settlement. One of my colleagues noted that she had hitherto refused to believe that Canada would deliberately drive our two countries into another round of the dispute at the WTO. She had made someone in Washington a bet that Canada would choose a more balanced outcome, likely one based on a tax deduction scheme, which would have left some room for split-run magazines to operate in the Canadian market, and allowed for greater competition. She admitted she had lost the bet.

While the reaction of the United States to the Copps-Marchi press conference was negative, during the late summer and early fall of 1998, while waiting for Canada's legislation to be unveiled, we kept quiet in hopes of lowering the temperature in the dispute. The perception of a clash between culture and trade had reverberations beyond Canada,

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<sup>7</sup> One insightful columnist, Andrew Coyne (1998), later pointed out that exaggerating the commercial threat from US magazines supported US firms' claims that they had been damaged by Canada's actions—and thus inadvertently bolstered the US case for trade retaliation.

particularly in France and other countries in the European Union, where questions of cultural integrity and preservation were also sensitive. Trade in audio-visual products (music and film) was an important area of US-European friction at the time, so the outcome of the comparatively small US-Canada magazine dispute might well affect bigger stakes in audio-visual trade with Europe.

How to enforce WTO dispute settlement—notably in a long-running dispute with the EU over bananas—was also a key question for US trade officials and political leaders at the time. Letting any trading partner off easily in a WTO dispute risked degrading the new WTO system, which was the result of years of multilateral trade policy effort. As one of my senior Embassy colleagues pointed out, the Office of the US Trade Representative (USTR) was up in arms in the wake of their magazine victory because twice in recent history with major trading partners, they had won their case on legal merits, but then they could not get any restitution. At the same time, many on the US side understood the delicacy of the international trade-and-culture debate, and they wanted to soften the United States' approach and image by being seen to be engaging in it (Garten, 1998).<sup>8</sup>

On October 8, 1998, the Government of Canada introduced Bill C-55, the *Foreign Publishers Advertising Services Act*, in Parliament. C-55 would ban, on pain of criminal penalties, the sale of ads aimed at Canadians by magazines with editorial content similar to their non-Canadian originals. C-55 was poorly conceived from the standpoint of trade law and policy. Legally, there was considerable doubt that the WTO would accept the “services” defence. In terms of policy, with split runs banned, the demand for non-split-run US magazines would be larger. Moreover, founding the policy on an ownership rule was problematic in various ways. A Canadian magazine could, for example, specialize in covering the Hollywood entertainment industry, and yet be supported by C-55 because it was Canadian-owned. There was no demonstrated link between the market share of Canadian-owned magazines and the strength of Canadian culture (Schwanen, 1998). The US Ambassador to Canada, Gordon D. Giffin, voiced the US viewpoint in a speech at a Canadian Club lunch on November 4. C-55's criminal dimension, he observed, made it demonstrably more restrictive than what it replaced—contrary to the direction in which Canada was committed to work in the WTO.

Still, most Canadians failed to appreciate this core trade law motive, and insisted on interpreting the US position as being driven purely by commercial motives. On November 17, Minister Coppins clashed with Reform Party Members of Parliament in a committee meeting, saying “the only opponents to the legislation tend to be American companies” and that it was “sad that a Canadian party is more interested in speaking out for its American bosses than it is for Canada”. She said Canada faced a perennial choice of “the state or the United States” and that non-American cultural identities were threatened by a global “monoculture” (Canada, 1998).<sup>9</sup>

During November, USTR began identifying categories of Canadian exports on which the United States might place tariffs in retaliation for C-55's being implemented. I participated in this analysis, focusing on exports from the province of Ontario, where Canada's Liberal Party government was based. We determined that steel products were the most logical

<sup>8</sup> Jeffrey Garten was Undersecretary of Commerce in the Clinton Administration.

<sup>9</sup> My American friends found Coppins' repeated characterization of US media and entertainment as the vanguard of a monoculture to be quite offensive. They believed that their nation's rich popular culture was built in conditions of admirable political and religious freedom by immigrants from scores of countries, and was deservedly one of its great successes. America was, in their view and mine, an unlikely country to be characterized as a monoculture.

retaliation targets. One of Canada's largest steel producers was based in Minister Copps' home town of Hamilton, Ontario, promising that our threat of retaliation would have some political effect on the person who seemed to be most active in driving the dispute.

Meanwhile, Ambassador Gordon Giffin sought common ground. On November 25, he told a newspaper, "I expressed an interest to a number of representatives of the Canadian government . . . to try to work through this issue to show that an issue that has been contentious over the years is one that we can work through and find a mutually satisfactory resolution. My offer wasn't taken up." He also stressed that the United States did not object to the fostering of Canadian culture, and noted that it was troubling that Copps had not invited a US representative to her conference of ministers of culture a few months earlier. "If we want to maintain a civil dialogue about how we resolve some of our differences, it is probably necessary to invite us to the discussions" (*National Post*, 1998).<sup>10</sup> During the dispute, Ambassador Giffin constantly offered his personal efforts to work toward finding a solution.

Nobody in Copps' office was willing to budge. The Minister clearly did not want to be seen to be making any move that might be seen as a concession—not even meeting with the Ambassador. In my view, this was primarily because large Canadian magazine publishers, who apparently were her main source of policy advice, were not interested in considering the most reasonable alternative solution to C-55, which was a subsidy-based regime, because subsidies might not be durable: subsidies could be reduced at any time, unlike a regime such as the one that C-55 would have cast permanently into law. Canadian magazine publishers were indifferent to the threat of sanctions against other industries, regardless of their economic weight, so the risk of retaliation would not alter their stance.

In late November two key Canadian magazine industry executives, Telemedia's François de Gaspé Beaubien and Maclean Hunter's John Tory called on Ambassador Giffin in his office to discuss Bill C-55. I witnessed this cordial but unproductive visit from start to finish. The next day in the Parliament Buildings, I overheard de Gaspé Beaubien telling a circle of listeners, "the US Ambassador tore a strip off me yesterday". A few days later, de Gaspé Beaubien wrote letters calling for C-55 to go forward, letters that the Ambassador believed implicitly denied their face-to-face discussion altogether.

Similarly, on November 28, when International Trade Minister Sergio Marchi was quoted making conciliatory remarks that seemingly inched away from Copps' "C-55 or nothing" position, *The Toronto Star* lashed out at both Minister Marchi and Ambassador Giffin:

Not only is Marchi undermining a cabinet colleague, he is squandering Canada's bargaining power. . . . It was . . . clear to anyone familiar with tactics the United States uses to penetrate global cultural markets that the Americans would put intense pressure on Ottawa to abandon—or at least rewrite—its magazine bill. US Ambassador Gordon Giffin wasn't even subtle about it. He delivered a hard-hitting speech to the Canadian Club warning that Ottawa was inviting trade retaliation with its "protectionist attitudes". He boasted to journalists that he had lobbied cabinet ministers to rethink the magazine policy and won some sympathizers. Now we know who bought his sales pitch (*The Toronto Star*, 1998).

<sup>10</sup> Canada's excuse for excluding the United States from the International Meeting on Cultural Policy in June 1998 was that the United States did not have a culture minister, so there was none to invite. Normally one invites countries, not individuals, to an international meeting, and it is up to the invited countries to decide whom to send. The June 1998 meeting was Minister Copps' own initiative and it was specifically directed at limiting the influence of the United States. The point is not that excluding the United States was necessarily wrong, only that the excuse was fake.

By the *Star's* telling, the Ambassador's polite and moderate presentation of the position of the United States at a Canadian Club lunch was a hard-hitting retaliation threat. His mention of his efforts to encourage dialogue was a boast to journalists. Minister Marchi—who would have to defend C-55 at the WTO and elsewhere in international trade circles, and whose Department had so much interest in finding a reasonable resolution to the dispute—was not showing much-needed moderation but, rather, had caved in and bought a sales pitch.

It is fair to conclude that players in the Canadian media establishment, whether they were posing as commentators or as advocates, wilfully and repeatedly misrepresented the Ambassador's efforts. As Ambassador Giffin pointed out repeatedly, a meeting was a necessity: it made no sense for two governments to converse through the national media. The reaction from Minister Copps' staff continued to be that they were not interested unless the Ambassador had new proposals to offer.<sup>11</sup> Meanwhile C-55's lead advocates hardened their nationalist rhetoric, associating any dialogue with a loss of sovereignty. "This is our right, as a country, to make legislation, and we intend to go forward with it," Minister Copps' spokesperson said (*The Globe and Mail*, 1999a). "If Canada ever backed down, it would mean that Washington basically dictates everything we do," Francois de Gaspé Beaubien said. "Is that how we are going to run our country?" (*The Globe and Mail*, 1999b).

Only the bad-cop side of the US approach—the threat of retaliation against Canadian industries such as steel, plastics and textiles—was having any political effect. Government caucus members began to state openly their intention to abstain from voting on the bill (Baxter, 1999).

Days before the House of Commons was set to resume, on February 1, the Canadian side agreed to schedule talks for February 5 and to delay consideration of C-55 in the meanwhile. The United States was unlikely to go ahead with retaliation while talks were ongoing, and in this relative calm, the Canadian government introduced an amendment to C-55 that allowed the Cabinet to decide when to implement the law (whereas most laws come into force immediately upon receiving royal assent). This amendment had the effect of reinforcing the truce.

On March 9, in a Cabinet meeting on the issue, according to media reports, Prime Minister Chrétien heard the cases for and against moving ahead with Bill C-55. Minister Copps argued for proceeding. Her opponents were the Canadian Ambassador to the United States, Raymond Chrétien, and the Prime Minister's senior policy advisor, Eddie Goldenberg, who hoped C-55 could be stalled where it then rested, in a Commons committee. The result of the meeting, however, was that Chrétien approved C-55's going forward (Winsor, 1999).

Minister Copps continued to resist the bilateral talks. Presenting C-55 for third and final reading on March 12, she told the House of Commons: "No democratically elected country would allow itself to be blackmailed into submission. . . . To do nothing would be to lie down to a schoolyard bully . . . to say, 'might means right'" (*The Globe and Mail*, 1999e). When C-55 passed the House of Commons on March 15, International Trade Minister Sergio Marchi missed the third-reading vote, which was seen as confirming his reluctance about the bill.

<sup>11</sup> Ambassador Giffin told the press: "She keeps saying she's willing to listen to proposals I might have, and I keep saying I'm willing to meet to talk about things, and somehow we need to find a way to get those statements to merge. . . . I can't believe that our governments cannot successfully hold good-faith discussions on this subject." Typically, a major Canadian newspaper reported this statement under the headline, "US envoy fires back in escalating war of words" (*The Globe and Mail*, 1999c), and "No 'silver bullet' for C-55, US says," (*The Globe and Mail*, 1999d).



After several rounds of very discreet talks in May, the two countries reached a settlement that allowed split-run magazines into the Canadian market on limited terms. Split runs could be exempted from C-55 if they earned no more than 12 percent of their advertising revenues from ads directed at Canadian readers, and this percentage was to be allowed to rise to 18 percent over a three-year period. The bill's definition of Canadian ownership was relaxed from 75 percent to more than half. The measures that had been ruled WTO-inconsistent (discriminatory postal rates and the ban at the border) were gone. Canada would introduce a system of direct subsidies to the magazine industry. Canada would transfer responsibility for reviewing prospective foreign investments in cultural industries from Industry Canada to the Canadian Heritage ministry. This transfer of investment review authority appeared to be the only gain the Minister had achieved by pushing the dispute to such lengths, since contrary to her vows, C-55 was going to be modified substantially.

Following the settlement in June 1999, the Canadian magazine industry seems to have survived better than its advocates foretold. While the terms of the agreement were quite different from what the Canadian magazine industry had wanted, or what C-55 had proposed, there was no onslaught of split runs, and the Canadian industry was not crushed, as Minister Copps had predicted (just weeks prior to the settlement) would happen if there was any retreat from C-55. Telemedia's François de Gaspé Beaubien told Senators that if C-55 was not passed as it was written, "few or no Canadian magazines will remain even thirty-six months from now" and that it would "devastate a generation of young writers" (Canada, 1999b).

In 2009, the industry's website ([www.magazinescanada.ca](http://www.magazinescanada.ca)) still displayed a 1999 overview of the deal which stated that Canada's previous magazine policy "has been largely eliminated, [clearing the way for] potentially enormous migration of ad revenue from Canadian magazines to US magazines, [and that] Canadian magazines will be hurt and Canadian content will suffer without a program to mitigate the damage." The website says not a word about split runs entering Canada after 1999. Rather, a news release from February 14, 2008, ("Magazine Ad Revenue Growth Continues") announced, "the Canadian magazine industry continues to expand advertising revenues, having grown faster than other major media ... combined, between 1999 and 2006." The Center for Media and Public Affairs (CMPA) cited average annual compound revenue growth of 6.9 percent versus 4.0 percent for other media. This brings to mind the Association of Canadian Advertisers' observation in 1996 that protection had caused Canadian magazines to under-develop in terms of their share of media ad revenues. If the website's figures paint a true picture, they actually appear to confirm that protectionism had indeed been stunting the growth of Canada's magazine industry prior to the dispute.

At the time of the June 1999 settlement, many (if not most) Canadian observers thought that the magazine dispute had represented the first round in a probable ongoing series of Canada-United States conflicts over the media and cultural industries. A friend in the television industry asked me in 1999, "So when are you going to come after us?" It was also widely expected that the magazine settlement would not last. Yet it has lasted, and other culture disputes have not occurred. Remarkably, in the subsequent decade, cultural issues have been less a feature of the bilateral US-Canada agenda than at any time in the previous four decades.

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Canadian observers in the 1990s widely believed that the United States had an overarching agenda to systematically break down Canada's cultural protections. Yet, as I worked day after day on the US side, I never saw or heard any evidence that the United States had such a strategy. The US side respected the cultural exemption in the FTA and NAFTA, and focused on upholding international legal rights that had been confirmed by the WTO in a specific case. If the United States had a broader agenda, it was to uphold the integrity of the young WTO dispute settlement system more generally. During the dispute, the United States clarified its public position that countries had a right to pursue measures to develop their national identities and cultures—a position that had been presaged by its allowing the cultural exemptions in the FTA and NAFTA.<sup>12</sup>

The mistaken expectation of ongoing conflict stemmed from dramatic misunderstandings that had been fomented by the heated atmosphere of the magazine dispute. Canadians were ready to believe in a systematic US government campaign to subjugate Canada, a belief for which there was no basis and no evidence.<sup>13</sup>

The Canadian media outlets that reported on this dispute were in a conflict of interest. The companies that owned them were mostly parties to the case, in that they either owned magazines directly, or they were affiliated with firms that owned magazines, or they had some other commercial interest in maintaining the policy measures involved. Even had this not been so, the reporters and columnists writing about this dispute were mostly members of a professional group that was deeply committed to the cultural policy apparatus. Minister Copps and magazine industry leaders provided a biased, good-versus-evil narrative, coloured with aggressive rhetoric, which writers eagerly amplified.<sup>14</sup> This largely explains why the magazine dispute dominated news and perceptions of the Canada-United States bilateral relationship in 1998-1999.<sup>15</sup>

<sup>12</sup> A further reinforcing factor to the belief that cultural conflict would continue was the advent of the Internet, which brought widespread expectation that media and information technologies would soon converge. Such technologies had contributed to the circumvention by *Sports Illustrated* of the border ban on split runs in 1993. It was widely thought that these technologies would quickly undercut Canadian cultural policy measures, bringing Canada and the United States into increasing conflict. In reality, convergence took about a decade longer than most players anticipated. Also, internet-based communications flooded around and past the regulated media in Canada—like a rising tide rather than a tsunami—leaving the regulated sectors in place (although declining in importance), but not devastated. Advancing information technology may actually have somewhat decreased the likelihood of international conflict over cultural policy, although it has raised the profile of certain related issues, such as privacy and copyright.

<sup>13</sup> For a particularly unreformed viewpoint of this type, see Crane (1999).

<sup>14</sup> An item published on May 7, 1998 by *The Toronto Star* (Speirs, 1998) further illustrates how some Canadian media covered the trade and legal issues at stake in the magazine dispute with biased, emotional language. National Affairs Writer, Rosemary Speirs, who probably knew (or ought to have known) better, wrote that the 1996-97 WTO case originated because "Jean Chrétien's new government underestimated the US administration's aggressiveness on behalf of the American entertainment industry". The "new" government had been in office for three years at the time of the case. There was no mention of *Sports Illustrated's* legitimate complaint about being shut down by a retroactive tax measure. Speirs remarked that "The US won the first round on technical trade grounds," although numerous Canadian trade lawyers stated that the WTO's support of the United States' complaint had been thorough and substantial. Speirs continued, "By making clear that the defense of Canadian magazines is a defense of Canadians' right to read about their own country in their own voices, Copps hopes to win the next round at the WTO," thus inserting a hot-button nationalist buzz phrase into what purported to be a discussion of WTO rules.

<sup>15</sup> The obvious counter-example is the Pacific salmon dispute, which, while it was long-running and probably carried greater economic weight than magazines, involved a very complicated tangle of federal, state and provincial governments, various aboriginal communities, commercial and recreational fishing interests, scientific complexities, and dispersed fish populations. Its resolution was negotiated around the same time as magazines and with similarly great difficulty, but it was more complex and thus harder to dramatize for mass readership, and it did not fire journalists' personal passions.

Most US players in the magazine dispute were taken aback by the vehemence of Canada's position, its inflammatory rhetoric, and the Canadian side's uncharacteristic rejection of reasonable diplomacy.<sup>16</sup> They were understandably concerned that these behaviours would resurface in a future disagreement. In fact, however, the magazine dispute was an aberration, one that was produced by relatively unusual circumstances: a small and not particularly sophisticated (but highly vocal) industry captured the loyalty of a Cabinet Minister and her staff; complicit media uncritically and fiercely endorsed their position, and the Prime Minister let them proceed.

Why did Prime Minister Chrétien back Minister Copps' approach to the dispute for so long? Chrétien leadership style was permissive: he generally let his ministers carry their own files and make their own mistakes. Moreover, from October 1998 onward, after C-55 had been introduced and once the issue had become so public and the rhetoric had hardened, the government really had no face-saving way out; appearing to soften even slightly had become unpalatable, given the intensity of the media focus.

Finally, Prime Minister Chrétien had to strike difficult compromises within a broadly based Liberal Party. Since 1993, "business" Liberals had been firmly in the driver's seat. Left-nationalists who had resisted trade liberalization, and other Mulroney-era policies, were feeling alienated from the Liberal Party by 1997, and Chrétien needed to keep them on board. Much like his predecessor, Brian Mulroney, he apparently felt that placating the cultural-policy lobby was a necessary price of carrying on broader liberalization in other areas.

What lessons can the foreign and trade policy community learn from this episode? There is certainly little we can do about the quality of political leadership in foreign and trade policy, and we cannot prevent policymakers from being responsive to one industry or interest at the expense of others. Still, it is worth noting that leader-level coordination, and moderation of cabinet-level positions plays a role. Prime Minister Chrétien could have acted earlier to restrain the Canadian Heritage Minister and to close the gap between her positions and those of the International Trade Minister and, indeed, the rest of the government caucus.

Media bias may be obvious in retrospect, and it was certainly evident to US players at the time, but to my knowledge, nobody on the Canadian side pointed it out or even seemed to notice it. Foreign policy observers could call the media out more often, particularly when commentators are in a conflict of interest and/or when imbalances exist to such a degree that they contribute to making political movement virtually impossible, and a dispute therefore irresolvable.

Effective policy requires that we analyze and understand other players' motives. At least in its public presentation, Canadian policy in the magazine dispute presumed that motives of the United States were wholly commercial and that USTR and the State Department were merely backing US media companies. It would not have required much attention to understand that the US government concerns were with respect to trade law, WTO dispute

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<sup>16</sup> Bill Merkin (1998), a former senior USTR official who had negotiated with Canada during the FTA talks, lamented both this belief, and the way it had caused the dispute to deteriorate: "I don't think anybody down here [in Washington] is sitting around and taking a look at the different sectors in Canada and saying, 'Oh, gee, we only have 30 percent of this one, let's target them, let's go after them.' . . . This all began with *Sports Illustrated* . . . I can candidly tell you that in all my years at USTR and throughout the free trade negotiations we never once had any interest expressed to us in going after the [Canadian magazine policies] which had been in place, what, since 1965 or some lengthy period like that. And it's unfortunate that change in technology and efforts to find a niche, and an inability of the two sides to compromise on the *Sports Illustrated* issue have led to this. I mean I don't think we need to be here. We didn't need to be here but we are" (United States Information Service Office, Toronto, Direct Video Conference Transcript, November 30, 1998).

settlement, the European Union, and other relationships, and such understanding might have allowed much better management of the dispute by the Canadian Heritage Ministry.

Finally, one of the well-understood lessons of trade policy is that protectionist measures, even when they are desired by the established firms in an industry, may not be effective in promoting that industry's long-run health. Policymakers should have entertained the possibility that what the major Canadian magazine publishers wanted in the 1990s might not have been in the interest of Canadian magazines, let alone of Canadian culture.<sup>17</sup>

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<sup>17</sup> "An odd feature of Canadian cultural policy is that protectionist measures are passionately supported but there is little effort expended to determine whether the results are in line with the expectations of supporters. The Canadian magazine industry is, by all reports, in as precarious a state in 1999 as it was 40 years earlier" (Acheson and Maule, 1999: 204).

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